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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

RHODE JR, ROBERT E

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/855,827	CHU ET AL.	
	Examiner	Art Unit	
	Rob Rhode	3625	<i>MM</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant amendment of 5-07-04 amended the specification and claims 1, 2, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15 and 16 and added new claim 17 as well as traversed rejections of Claims 1 - 16.

Currently, claims 1- 17 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 9, 11, 12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Treyz (US 6,587,835 B1) in view of Bouve (US 6,415,291 B2).

Regarding Claim 1 and related claims 11 and 14 (currently amended), Treyz teaches a method and system of optimizing a shopping list process, comprising steps of:

obtaining a shopping list comprising a plurality of items (see at least Abstract and Figures 24 and 32);

obtaining one or more factors, which a user wishes to use in optimizing a shopping path for the items on the shopping list (see at least Abstract and Figures 41 and 47).

Although Treyz in the same area of online shopping does disclose providing a shopping list item by location and a marked path, the reference does not specifically disclose and teach a method for programmatically determining a plurality of merchants and locations thereof where the items may be purchased; and programmatically computing the shopping path such that the user can use the shopping path to travel among the locations of at least two selected ones of the merchants, wherein the merchants are selected according to the one or more obtained factors.

On the other hand, Bouve teaches a method for programmatically determining a plurality of merchants and locations thereof where the items may be purchased (see at least Abstract, Col 2, lines 5 – 27 and Figure 2). Please note in Figure 2 that more than one computer products store is graphically displayed as result of the system computing via a program a plurality of merchant locations for computer products.

and programmatically computing the shopping path such that the user can use the shopping path to travel among the locations of at least two selected ones of the merchants, wherein the merchants are selected according to the one or more obtained factors (see at least Abstract, Col 5, lines 5 – 19 and Figure 2). Please note that Figure 2, the method programmatically computes and displays a “path” for the individual to follow to traverse from one computer products store to the next computer products store. The “path” for the shopper is clearly noted by the streets to follow in order to

traverse from one computer products store to the next. Moreover and as noted above, Treyz clearly provides a "shopping path to travel".

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the method and system of Treyz with the method and system of Bouve to have enabled optimizing a shopping list process, comprising steps of:

obtaining a shopping list comprising a plurality of items; obtaining one or more factors which a user wishes to use in optimizing a shopping path for the items on the shopping list; programmatically determining a plurality of merchants and locations thereof where the items may be purchased; and programmatically computing the shopping path such that the user can use the shopping path to travel among the locations of at least two selected ones of the merchants, wherein the merchants are selected according to the one or more obtained factors – in order to ease the shoppers burden both from remembering the list as well as having to figure out a route to these merchants, which is usually less than optimum. Treyz discloses a method and system of optimizing a shopping list process, comprising steps of: obtaining a shopping list comprising a plurality of items; obtaining one or more factors which a user wishes to use in optimizing a shopping path for the items on the shopping list (see at least Abstract and Figures 41 and 47). Bouve discloses a method and system method for programmatically determining a plurality of merchants and locations thereof where the items may be purchased; and programmatically computing the shopping path such that the user can use the shopping path to travel among the locations of at least two selected ones of the

store. The "path" for the shopper is clearly noted by the streets to follow in order to traverse from one computer products store to the next.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the method and system of Treyz with the method and system of Bouve to have enabled optimizing a shopping list process, comprising steps of:

obtaining a shopping list comprising a plurality of items; obtaining one or more factors which a user wishes to use in optimizing a shopping path for the items on the shopping list; programmatically determining a plurality of merchants and locations thereof where the items may be purchased; and programmatically computing the shopping path such that the user can use the shopping path to travel among the locations of at least two selected ones of the merchants, wherein the merchants are selected according to the one or more obtained factors – in order to ease the shoppers burden both from remembering the list as well as having to figure out a route to these merchants, which is usually less than optimum. Treyz discloses a method and system of optimizing a shopping list process, comprising steps of: obtaining a shopping list comprising a plurality of items; obtaining one or more factors which a user wishes to use in optimizing a shopping path for the items on the shopping list (see at least Abstract and Figures 41 and 47). Bouve discloses a method and system method for programmatically determining a plurality of merchants and locations thereof where the items may be purchased; and programmatically computing the shopping path such that the user can use the shopping path to travel among the locations of at least two selected ones of the

merchants, wherein the merchants are selected according to the one or more obtained factors (Abstract, Col 2, lines 5 – 27 and Figure 2). Thereby, one of ordinary skill in the art would have been motivated to extend the method and system of Treyz with a method and system for programmatically determining a plurality of merchants and locations thereof where the items may be purchased; and programmatically computing the shopping path such that the user can use the shopping path to travel among the locations of at least two selected ones of the merchants, wherein the merchants are selected according to the one or more obtained factors.

As a result and with these capabilities, the shopper's satisfaction will be greatly increased, which increase the probability that they will return to use the service again for other shopping trips as well as recommend the service to others.

Regarding claim 5 and related claims 12 and 15 (currently amended, Treyz teaches a method, further comprising steps of traveling to each successive merchant on the computed shopping path, purchasing zero or more items from the shopping list at each merchant; and programmatically remembering which items have been purchased (Abstract and Figure 11).

Regarding claim 9 (currently amended), Treyz teaches a method, wherein the programmatically determining step further comprises the step of contacting the merchants are in a dynamic and automated manner to determine availability of the items on the shopping list (Abstract, Col 1, lines 41 – 46 and Figure 1).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Treyz and Bouve as applied to claim 1 above, and further in view of Singh (US 2002/0091758 A1).

The combination of Treyz and Bouve disclose and teach substantially the applicant's invention.

While the combination of Treyz and Bouve discloses a path and the number of blocks to the next computer products store, the combination of references does not specifically disclose and teach wherein one of the obtained factors is to optimize a physical length for the shopping path for traveling among the selected merchants

On the other hand and regarding claim 2 (currently amended), Singh teaches a method, wherein one of the obtained factors is to optimize a physical length for the shopping path for traveling among the selected merchants (see at least Page 7, Para 0119).

Please note that Singh does not disclose merchants. However, Singh does disclose computing the shortest distance between two points. In this regard, it would have been obvious to one of ordinary skill in the art to have extended the method of Singh with a method wherein one of the obtained factors is to optimize a physical length for the shopping path for traveling among the selected merchants. In this manner, the user will

be confident of the method is optimizing/computing the shortest route between merchants stores.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the combination of Treyz and Bouve with the method of Singh to have enabled a method wherein one of the obtained factors is to optimize a physical length for the shopping path for traveling among the selected merchants. The combination of Treyz and Bouve disclose a method and system for optimizing a shopping list process, comprising steps of: obtaining a shopping list comprising a plurality of items; obtaining one or more factors which a user wishes to use in optimizing a shopping path for the items on the shopping list; programmatically determining a plurality of merchants and locations thereof where the items may be purchased; and programmatically computing the shopping path such that the user can use the shopping path to travel among the locations of at least two selected ones of the merchants, wherein the merchants are selected according to the one or more obtained factors. Singh discloses a method, wherein one of the obtained factors is to optimize a physical length for the shopping path for traveling among the selected merchants (Page 7, Para 0119). Therefore, one of ordinary skill in the art would have been motivated to extend the combination of Treyz and Bouve with a method wherein one of the obtained factors is to optimize a physical length for the shopping path for traveling among the selected merchants.

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Claims 3 – 4, 6 – 7, 10, 13, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Treyz and Bouve as applied to claims 1, 11 and 14 above, and further in view of Ogasawara (US 6,386,450 B1).

The combination of Treyz and Bouve substantially discloses and teaches the applicant's invention.

However, the combination does not specifically disclose and teach a method which includes a shopping path begins from an identified starting location and terminates at an identified ending location, which may be identical to the starting location as well as dynamically contacting merchants to determine availability of the items on the list; and comprising the step of computing a summary after visiting the selected merchants, wherein the summary comprises information pertaining to one or more of which merchants were visited; the remembered items which were purchased; a cost of the remembered items which were purchased; a count of merchants visited; a cost savings of the remembered items which were purchased.

Regarding claim 3 and 4 (original), the recitation that " wherein one of the obtained factors is to optimize a purchase cost for the items on the shopping list" and (4) "wherein one of the obtained factors is to optimize a number of merchants on the shopping path", such recitation(s) are given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant

invention from the other "optimization" already disclosed by Ogasawara. Moreover, optimization techniques of various functions to provide specific results are old and well known before the time of the applicant's invention and known to one of ordinary skill in the art (see US 6,411,922 B1). Therefore, it would have been obvious to incorporate optimization techniques into the method and system of Ogasawara to include purchase cost and number of merchants on the shopping path in order to ease the list making and resultant mental stress for the customer in remembering everything. In this manner, the customer satisfaction will be increased and thereby increasing the probability that the customer will continue to use the offered service capability.

Regarding claim 6 and related claims 13 and 16 (currently amended), Ogasawara teaches a method, further comprising steps of programmatically creating a revised shopping list which excludes the programmatically remembered items; and determining whether items expected at a particular one of the merchants were available for purchase, and if not, programmatically recomputing the shopping path after adding the items which were unavailable to the revised shopping list (Col 2, lines 61 – 67 and Figures 4, 5A and B and 9). Please note that Ogasawara does not refer specifically to merchants, rather to a merchant and defining an optimum shopping path for the shopper in the merchant's store. In this regard, it would have been obvious to add the capability to expand the geographical area as with Bouve to include other merchants. In this manner, the customer would be pleased and use the service capability in addition to

include these other merchants. In this manner, the customer will likely recommend the service to others.

Regarding claim 7 (original), Ogasawara teaches a method, wherein the shopping path begins from an identified starting location and terminates at an identified ending location, which may be identical to the starting location (Col 3, lines 57 – 60).

Regarding claim 10 (currently amended), Ogasawara teaches a method, further comprising the step of programmatically computing a summary after traveling to the selected merchants, wherein the summary comprises information pertaining to one or more of which merchants were traveled to; the remembered items which were purchased; a cost of the remembered items which were purchased; a count of merchants traveled to; a cost savings of the remembered items which were purchased (Col 16, lines 20 – 22).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the combination of Treyz and Bouve with the method and system of Ogasawara to have enabled, wherein one of the obtained factors is to optimize a path length for the shopping path, purchase cost, and cost of items as a shopping list which excludes items; and includes a shopping path begins from an identified starting location and terminates at an identified ending location, which may be identical to the starting location as well as dynamically contacting merchants to determine availability of the

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items on the list; and comprising the step of computing a summary after visiting the selected merchants, wherein the summary comprises information pertaining to one or more of which merchants were visited; the remembered items which were purchased; a cost of the remembered items which were purchased; a count of merchants visited; a cost savings of the remembered items which were purchased – in order to include the capability of remembering as well as updating a shopping list based on results from the current trip. The combination of Treyz and Bouve disclose a method and system for optimizing a shopping list process, comprising steps of: obtaining a shopping list comprising a plurality of items; obtaining one or more factors which a user wishes to use in optimizing a shopping path for the items on the shopping list; programmatically determining a plurality of merchants and locations thereof where the items may be purchased; and programmatically computing the shopping path such that the user can use the shopping path to travel among the locations of at least two selected ones of the merchants, wherein the merchants are selected according to the one or more obtained factors. Ogasawara disclose a method and system which includes a shopping path begins from an identified starting location and terminates at an identified ending location, which may be identical to the starting location as well as dynamically contacting merchants to determine availability of the items on the list; and comprising the step of computing a summary after visiting the selected merchants, wherein the summary comprises information pertaining to one or more of which merchants were visited; the remembered items which were purchased; a cost of the remembered items which were purchased; a count of merchants visited; a cost savings of the remembered

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items which were purchased (Abstract, Col 2, lines 61 – 67 and Figures 4, 5A and B and 9). Therefore, one of ordinary skill in the art would have been motivated to extend the combination of Treyz and Bouve with a method and system which includes a shopping path begins from an identified starting location and terminates at an identified ending location, which may be identical to the starting location as well as dynamically contacting merchants to determine availability of the items on the list; and comprising the step of computing a summary after visiting the selected merchants, wherein the summary comprises information pertaining to one or more of which merchants were visited; the remembered items which were purchased; a cost of the remembered items which were purchased; a count of merchants visited; a cost savings of the remembered items which were purchased. In that regard, the shopper's burden for remembering everything, which will ease their already overburdened minds and thereby increase their satisfaction. With this increased satisfaction, the probability is increased that their loyalty and continued use of this service for future shopping will also be increased.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Treyz and Bouve as applied to claim 1 above, and further in view of Jain (US 5,155,679).

The combination of Treyz and Bouve substantially disclose and teach the applicant's invention.

However, the combination does not specifically disclose and teach a method wherein one or more traveling salesman algorithm implementations are used by the programmatically computing step.

On the other hand and regarding claim 8 (currently amended), Jain teaches a method wherein one or more traveling salesman algorithm implementations are used by the programmatically computing step (Col 16, line 3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the combination of Treyz and Bouve with the method of Jain to have enabled a method wherein one or more traveling salesman algorithm implementations are used by the programmatically computing step. The combination of Treyz and Bouve disclose a method and system for optimizing a shopping list process, comprising steps of: obtaining a shopping list comprising a plurality of items; obtaining one or more factors which a user wishes to use in optimizing a shopping path for the items on the shopping list; programmatically determining a plurality of merchants and locations thereof where the items may be purchased; and programmatically computing the shopping path such that the user can use the shopping path to travel among the locations of at least two selected ones of the merchants, wherein the merchants are selected according to the one or more obtained factors. Jain discloses a method wherein one or more traveling salesman algorithm implementations are used by the programmatically computing step (Col 16, line 3). Therefore, one of ordinary skill in the

art would have been motivated to extend the combination of Treyz and Bouve with a method wherein one or more traveling salesman algorithm implementations are used by the programmatically computing step.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Treyz and Bouve as applied to claim 1 above, and further in view of Obradovic (US 2002/0038307).

The combination of Treyz and Bouve substantially disclose and teach the applicant's invention.

However, the combination does not specifically disclose and teach a method wherein the nearest neighbor algorithm implementation is used by the programmatically computing step.

On the other and regarding claim 17 (new), Obradovic teaches a method wherein the nearest neighbor algorithm implementation is used by the programmatically computing step (Page 7, Para 0063).

It would have been obvious to one of ordinary skill in that art at the time of the invention to have provided the combination of Treyz and Bouve with the method of Obradovic to

have enabled wherein the nearest neighbor algorithm implementation is used by the programmatically computing step.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the combination of Treyz and Bouve with the method of Obradovic to have enabled a method wherein the nearest neighbor algorithm implementation is used by the programmatically computing step. The combination of Treyz and Bouve disclose a method and system for optimizing a shopping list process, comprising steps of: obtaining a shopping list comprising a plurality of items; obtaining one or more factors which a user wishes to use in optimizing a shopping path for the items on the shopping list; programmatically determining a plurality of merchants and locations thereof where the items may be purchased; and programmatically computing the shopping path such that the user can use the shopping path to travel among the locations of at least two selected ones of the merchants, wherein the merchants are selected according to the one or more obtained factors. The combination of Treyz and Bouve disclose a method and system for optimizing a shopping list process, comprising steps of: obtaining a shopping list comprising a plurality of items; obtaining one or more factors which a user wishes to use in optimizing a shopping path for the items on the shopping list; programmatically determining a plurality of merchants and locations thereof where the items may be purchased; and programmatically computing the shopping path such that the user can use the shopping path to travel among the locations of at least two selected ones of the merchants, wherein the merchants are selected according to the

one or more obtained factors. Obradovic discloses a method wherein the nearest neighbor algorithm implementation is used by the programmatically computing step (Page 7, Para 0063). Thereby, one of ordinary skill in the art at the time of the invention would have been motivated to extend the combination of Treyz and Bouve with a method wherein the nearest neighbor algorithm implementation is used by the programmatically computing step.

Response to Arguments

Applicant's arguments with respect to claims 1 - 16 have been considered but are moot in view of the new ground(s) of rejection.

The applicant's arguments with respect to "path" are addressed above at claim 1.

Please note, a "traverse" is a denial of an opposing party's allegations of fact.¹ The Examiner respectfully submits that applicants' arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common

¹ Definition of Traverse, Black's Law Dictionary, "In common law pleading, a traverse signifies a denial."

knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). MPEP 2144.03 Reliance on Common Knowledge in the Art or "Well Known" Prior Art. In view of applicant's failure to adequately traverse official notice, the following are admitted prior art: Moreover, optimization techniques of various functions to provide specific results are old and well known before the time of the applicant's invention and known to one of ordinary skill in the art (see US 6,411,922 B1). Therefore, it would have been obvious to incorporate optimization techniques into the method and system of Ogasawara to include purchase cost and number of merchants on the shopping path in order to ease the list making and resultant mental stress for the customer in remembering everything. In this manner, the customer satisfaction will be increased and thereby increasing the probability that the customer will continue to use the offered service capability.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Rob Rhode** whose telephone number is **(703) 305-8230**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeff Smith** can be reached on **(703) 308-3588**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 308-1113**.

Any response to this action should be mailed to:

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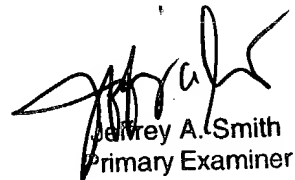
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RER


Jeffrey A. Smith
Primary Examiner